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Via CM/ECF

By **February 1, 2021**, Defendants shall file a substantive letter response, not to exceed three single spaced pages, to Plaintiffs' letter motion at Dkt. No. 153.

January 20, 2021

SO ORDERED.

Honorable Lorna G. Schofield  
United States District Court  
Southern District of New York  
500 Pearl Street  
New York, New York 10007

Dated: January 25, 2021  
New York, New York

LORNA G. SCHOFIELD  
UNITED STATES DISTRICT JUDGE

Re: *Nichols v. Noom, Inc.*, Case No. 1:20-cv-03677-LGS: Opposition to Plaintiffs' Second Request to Establish Bellwether Proceeding.

Dear Judge Schofield:

Defendants Noom, Inc. and Artem Petakov ("Noom") write to oppose Plaintiffs' renewed request for extraordinary departures from the applicable rules in this putative nationwide class action.

This Court recently denied Plaintiffs' request to apply a bellwether construct in place of the traditional class certification process. Dec. 17, 2020 Tr. at 7:6-17 ("My thought is that I don't see any reason at all to do it . . . since the law is different in each state, it seems to me that it is unlikely that, even in rulings of law, there would be any efficiencies.") Now, a mere four weeks later, Plaintiffs have filed a renewed motion for a bellwether process—based on the very same arguments that the Court just rejected. Plaintiffs may have misperceived this Court's denial of their motion as an open invitation to file a renewed motion at any time; however, no new facts or circumstances of relevance to Plaintiffs' request exist, and the narrow conditions under which the Court suggested a renewed motion might be considered are not at issue here. *See id.* at 12:6-13 ("If at some point in the future it is clear we are talking about all 50 states and you have more or less finished discovery and it's time for trial and you want to make a proposal that we structure the trial or trials in some way that avoids trying all 50 states at once, you can raise it at that time.").

Noom is prepared to submit another substantive opposition to Plaintiffs' letter motion, if the Court is inclined to entertain it, but respectfully submits that Plaintiffs' renewed request is improper and should be summarily denied.

Sincerely,

/s/ Michael G. Rhodes  
Michael G. Rhodes

*Counsel for Defendants Noom Inc. and Artem Petakov*